



**Food Safety in**

**Queensland**

Local Government assessment  
of applications for a licence  
under the *Food Act 2006*

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**Queensland  
Government**

*in partnership with*



LOCAL GOVERNMENT  
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## Introduction

In Queensland certain food businesses are required to be licensed with their Local Government. This guideline provides guidance on which food businesses are required to be licensed. It also provides advice for Local Government on the process for assessing and approving applications for licence, including those applications with food safety programs. It includes a process for handling renewal, restoration, amendment and replacement of licences and covers fixed, temporary and mobile premises.

## Guidance

### Activities exempt from the application of the Act

The following food activities are exempt from the application of the *Food Act 2006*:

- ▶ State or government owned corporations
- ▶ the handling or sale of food at a tuckshop operated by a parents and citizens association<sup>1</sup> at a state school<sup>2</sup>
- ▶ the handling of food, at a person's home, intended to be given away to a non-profit organisation for sale by the organisation.

**Example** Baking a cake to give to a junior football club committee for sale by the committee at a fundraising stall.

These activities do not require a licence and are exempt from all requirements under the Act and are not subject to enforcement provisions or inspections. However, Queensland Government facilities operating as a food business will be required to comply with administrative arrangements equivalent to the provisions of the *Food Act 2006*. This will be monitored by Queensland Health. If the food business in a Queensland Government facility is sub-leased by a private commercial entity, then a licence under the Act is required.

**Example** A food business sub-leased by a commercial entity at a railway station would require a licence and should consult with the relevant Local Government for the area regarding the suitability of the premises.

If that food business was run by the State or a government owned corporation, then a licence would not be required, but the obligations imposed on other food businesses would still have to be met. The food business should consult with the relevant population health unit regarding the suitability of the premises.

### Which food businesses do not require a licence?

Certain food businesses are exempt from licensing requirements. These include:

- ▶ the production of primary produce under an accreditation granted under the *Food Production (Safety) Act 2000* – including meat, dairy and egg schemes
- ▶ the handling or sale of fisheries resources under a buyer licence issued under the *Fisheries Regulation 1995*, except where the seafood is cooked
- ▶ the sale of unpackaged snack food, such as biscuits, cakes, confectionary, nuts and potato chips that are not potentially hazardous food
- ▶ the sale of whole fruit or vegetables
- ▶ the sale of seeds, spices, dried or glazed fruit, dried herbs, tea leaves, coffee beans or ground coffee
- ▶ the grinding of coffee beans

<sup>1</sup> A parents and citizens association formed under the *Education (General Provisions) Act 1989*

<sup>2</sup> *Education (General Provisions) Act 1989*, section 2 – State school means a school at which primary, secondary or special education is provided by the State.

- ▶ the sale of drinks (other than fruit or vegetable juice processed at the place of sale) including, for example, tea, coffee, soft drinks and alcohol
- ▶ the sale of ice, including flavoured ice, such as slurpees and snow cones or bags of party ice
- ▶ the provision of meals by a non-profit organisation that are pre-prepared by another organisation and are stored and heated or otherwise prepared by the non-profit organisation in accordance with the directions of the meal's manufacturer

## Example

The sale of a frozen meal that has been reheated at a canteen welfare organisation.

- ▶ the sale of food, by a non-profit organisation, that is prepared as part of an educational or training activity conducted by the organisation involving food preparation, hospitality or catering
- ▶ a food business prescribed by a regulation.

While these food businesses are exempt from the licensing requirements and associated provisions, such as food safety supervisors and food safety programs, they are still required to comply with all other aspects of the *Food Act 2006* and the Food Standards Code, including the Food Safety Standards. These food businesses may be inspected, if needed, and are subject to the same offences and enforcement methods as licensed food businesses.

## What is a licensable food business?

A *food business* is a business, enterprise or activity (other than primary food production) that involves the handling of food for sale, or the sale of food, regardless of whether the business is of a commercial, charitable or community nature, or whether it involves the handling or sale of food on one occasion only. A separate licence is required for each food business.

A *licensable food business* is a food business that –

- ▶ involves the manufacture of food; or
- ▶ is carried on by an entity other than a non-profit organisation and involves the sale of unpackaged food by retail; or
- ▶ is carried on by a non-profit organisation and involves the sale of meals on at least 12 days each financial year.

## Examples of licensable food businesses

The following industry sectors are examples of licensable food businesses:

### *Manufacture of food*

- ▶ cannery
- ▶ production of packaged ice

### *Sale of unpackaged food by retail*

- ▶ restaurant or delicatessen
- ▶ catering business
- ▶ takeaway food shop, such as a pizza shop
- ▶ motel providing meals with accommodation
- ▶ food business that involves selling food, such as hamburgers, from a motor vehicle or unpackaged food from a vending machine
- ▶ private hospital
- ▶ private school tuckshop
- ▶ temporary food stalls
- ▶ child care centres/services
- ▶ private residential facilities

- ▶ food vans, itinerant vendors
- ▶ bed and breakfasts

### **Non-profit organisations that provide meals for a fee on at least 12 days each financial year**

- ▶ the '12 days each financial year,' may be consecutive or any other combination or grouping of days, equalling or exceeding a total of 12 days in a financial year. Therefore, monthly occurrences of the provision of meals for a fee would constitute a licensable food business
- ▶ a restaurant, open daily to the public, operated by a sporting club to raise revenue for the club
- ▶ the provision of meals for a fee to homeless persons at a homeless persons' hostel
- ▶ the provision of meals by Meals on Wheels.

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## ***Application process***

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### **What an application must state**

The minimum information required on an application for licence is:

- ▶ name of the applicant
- ▶ address of the applicant
- ▶ address of the premises (for fixed premises)
- ▶ description and registration number of mobile premises
- ▶ address where a mobile premises can be inspected
- ▶ proposed location of temporary premises
- ▶ brief description of the type of food business (eg. café, takeaway etc)
- ▶ make and model of food transport vehicles for off-site catering
- ▶ details of any convictions against the applicant
- ▶ other information required by the Local Government to determine the suitability of the applicant or the premises (eg. plans of the proposed premises)
- ▶ name and contact details of the proposed food safety supervisor (if known)
- ▶ the requested term of the licence.

The application must be in the approved form, signed by the applicant and be accompanied by any required fee. The *Electronic Transactions (Queensland) Act 2001* allows for applications that must be signed to be made electronically, provided the electronic application:

- ▶ identifies the time and place of the dispatch and receipt of an electronic communication; and
- ▶ identifies the person sending the application and that person is, or has the authority of, the applicant.

### **Where an application must go**

#### ***Fixed or temporary food premises***

If the food business is to be carried on from fixed premises or temporary premises, the application must be made to the Local Government for the area in which the premises are, or will be, located.

### **Early application**

An application for a food licence may be received at a time where a final inspection and determination is not able to be conducted within the time limits imposed by the Act.

#### **Example**

The development application for a greenfield site includes a licence application for a food business. The completion of the proposed development will not occur for 12 months. The Local Government is unable to inspect the fit out and final stage of the business within the timeframes in the Act.

The Act provides a method through which this matter may be managed. Section 62 allows for the Local Government and the applicant to agree to an extended determination date to decide the application.

It is recommended that town planning and Integrated Development Application System (IDAS) management options are considered.

### ***Off-site catering***

If the food business involves off-site catering, the application must be made to the Local Government for the area in which the applicant's principal place of business is located or proposed to be located. This licence will cover the principal place of business and also cover off-site catering where food is handled within another Local Government area.

### ***Mobile food premises***

If the food business is to be carried on from mobile premises, a licence is required from only one of the Local Governments in which the business intends to operate.

Queensland Health will maintain a publicly available register of licensed mobile food premises from 1 July 2007. Local government and consumers will be able to access this register to determine if a mobile food premises is licensed. For information on enforcement options in relation to licences issued by another Local Government, see the *Guideline on Monitoring and Enforcement of the Act Food Act 2006*.

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## ***Application for licence***

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A licence may be issued only if the Local Government is satisfied that:

1. the applicant is a suitable person to hold a licence
2. the premises from which the food business is to be carried on is suitable
3. a food safety program is accredited if required.

These criteria are also used when deciding applications to renew a licence or in deciding whether grounds exist to suspend or cancel a licence.

### **Suitability of person to hold a licence**

The following criteria should be used to determine whether a person is a suitable person to hold a licence:

- ▶ whether the applicant has appropriate expertise or experience to provide safe and suitable food or is able to obtain the services of other persons with appropriate expertise or experience to provide safe and suitable food
- ▶ whether the applicant has a conviction for a relevant offence, other than a spent conviction
- ▶ whether the applicant has had a licence suspended, cancelled or an application for a licence refused under the *Food Act 2006*, the *Food Act 1981* or a corresponding law
- ▶ anything else relevant to the applicant's ability to sell safe and suitable food.

Queensland Health will maintain a register of all prosecutions undertaken by the Department under the *Food Act 2006* and previous legislation. Local government will be able to access this register to search for relevant convictions by contacting their population health unit.

### **Suitability of premises**

In deciding whether a premises is suitable the Local Government must assess whether the premises complies with the *Food Standards Code, Standard 3.2.3 – Food Premises and Equipment*.

*Safe Food Australia*, a guide to chapter 3 of the Food Safety Standards may be used as an interpretive guide. The *Australian Standard for the Design, construction and fit-out of food premises (AS 4674 – 2004)* provides design, construction and fit-out criteria for new food premises and for the renovation or alteration of existing premises. AS4674 is not a legislative standard in Queensland and it is not mandatory for food premises to comply with it. However, any premises designed and constructed in accordance with AS4674 would be deemed to comply with Standard 3.2.3.

The scope of AS4674 is limited to permanent buildings used by the food service industry, food retailers and small-scale food manufacturers. The Standard does not provide criteria for the design, construction and fit-out of temporary and mobile food premises.

### **Food safety programs**

From 1 July 2007 the following food businesses must have a food safety program:

- ▶ a food business that involves on-site catering or off-site catering; or
- ▶ a food business that is carried on as part of the operations of a private hospital under the *Private Health Facilities Act 1999*.

Other businesses may be required to implement food safety programs at a later date. This will be prescribed under a regulation if required.

### **Content of a food safety program**

A food safety program must:

- a) systematically identify food safety hazards that are reasonably likely to occur in food handling operations of the food business
- b) identify where, in a food handling operation of a food business, each hazard identified under paragraph (a) can be controlled and the means of control
- c) provide for the systematic monitoring of the means of control
- d) provide for appropriate corrective action to be taken when a hazard identified under paragraph (a) is not under control
- e) provide for regular review of the program to ensure it is appropriate for the food business
- f) provide for the keeping of appropriate records for the food business, including records about action taken to ensure the business is carried on in compliance with the program
- g) contain other information, relating to the control of food safety hazards, prescribed under a regulation.

The Local Government must be reasonably satisfied that the implementation of the program is likely to effectively control the food safety hazards of the business. The Local Government must have regard to the nature of the food handled and the nature and extent of food handling carried on in the food business.

### **Accreditation of a food safety program**

If the licence application includes a proposed food safety program and the Local Government decides to grant the licence application, the Local Government is taken to have accredited the food safety program. The Local Government will record on the food safety program that it is accredited and give the accredited program to the applicant.

A food safety program is not taken to be accredited on the issue of a provisional licence.

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### ***Licence renewal, restoration, amendment and replacement***

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Once a licence has been issued, a licensee is able to apply for renewal, restoration or amendment of that licence. These applications are subject to the same criteria for suitability and administrative process as applications for a licence.

The renewal, restoration, or amendment of licences does not apply to provisional licences.

### **Renewal of licence**

A licensee may apply for a renewal of licence within 60 days before the licence expires. In addition to the criteria established for issuing a licence, the Local Government may also consider:

- ▶ the results of inspections during the current term of the licence
- ▶ whether there are any outstanding fees.

If a licensee applies for a renewal of licence the licence is taken to continue in force from the day it would have ended until the application is decided or taken to have been withdrawn.

### **Restoration of licence**

A licensee whose licence has expired may apply for the restoration of the licence within 30 days after the licence ends. In addition to the criteria established for issuing a licence, the Local Government may also consider:

- ▶ the results of inspections during the current term of the licence
- ▶ whether there are any outstanding fees.

If a person applies for restoration of a licence the licence is taken to continue in force from the day it ended until the application is decided or taken to have been withdrawn.

### **Amendment of licence**

A licensee may apply for an amendment to their licence. The application must be submitted with the current licence (Note: a copy of the licence would need to be retained for display at the food business to meet licence conditions). The Local Government may amend a licence by changing the location of the premises, licensee, the operation of the business (eg. dry bakery to a production bakery, supermarket to also include a takeaway, café to include off-site catering), clientele - (eg. from general public to catering for a hospital) contact details of the licensee or structure of the premises.

An assessment process may also be required for the changes to occur.

A licence may be amended by endorsing the existing licence with details of the amendment or cancelling the existing licence and issuing another licence to replace it.

### **Replacement of licence**

A licensee may apply for the replacement of their licence in the event that the licence is damaged, destroyed, lost or stolen. The application for replacement must include information about the reason for the replacement.

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### ***Failure to decide licence application***

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This section applies to applications for a licence, as well as applications for renewal, restoration or amendment of a licence.

If the Local Government fails to decide an application within 30 days after its receipt the failure is taken to be a decision by the Local Government to refuse to renew, restore or amend the licence.

If the Local Government has required a person to provide further information or a document, the Local Government is taken to have refused to renew, restore or amend the licence if the Local Government does not decide the application within 30 days after the further information or document is received.

An information notice must be issued by the Local Government with the reason for failing to make a decision.

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### ***Notice of expiry of licence***

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The Local Government that issued the licence must give the licensee notice of the expiry of the licence at least 60 days before it ends.

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### ***Inquiry about application***

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This section applies to applications for a licence, as well as applications for renewal, restoration or amendment of a licence.

The Local Government may make enquires necessary to gather sufficient information to decide an application. This may mean requesting further information or documentation from the applicant or undertaking an inspection of the premises. The applicant must be given an information notice, allowing at least 30 days to provide the requested

information. If the applicant does not comply with the request within the stated period, the applicant is taken to have withdrawn the application.

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### ***Decision on application***

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This section applies to applications for a licence, as well as applications for renewal, restoration or amendment of a licence.

#### **Granting an application**

When the Local Government has made a decision to grant the application, an information notice must be given outlining the decision along with a copy of the licence and accredited food safety program (if applicable). The Local Government may decide to impose conditions on the licence with the reasons for doing so outlined in the information notice.

#### **Refusing to grant an application**

If the Local Government decides to refuse the application, an information notice must be given outlining the reason for the decision.

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### ***Complex applications***

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If the Local Government needs more time to decide an application because of the complexity of the matters that need to be considered the Local Government may give notice to the applicant to extend the final consideration day by 30 days.

The applicant and the Local Government may at any time before the final consideration day agree, in writing, to extend the day by which the application is decided.

The Local Government is taken to have refused the application if the application is not decided on the extended final consideration day.

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### ***Final consideration day***

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The final consideration day is 30 days after the receipt of the application, unless the Local Government has required the applicant to provide further information. If the Local Government has required the applicant to provide further information or a document, the day that is 30 days after the day the Local Government receives the information is the final consideration day.

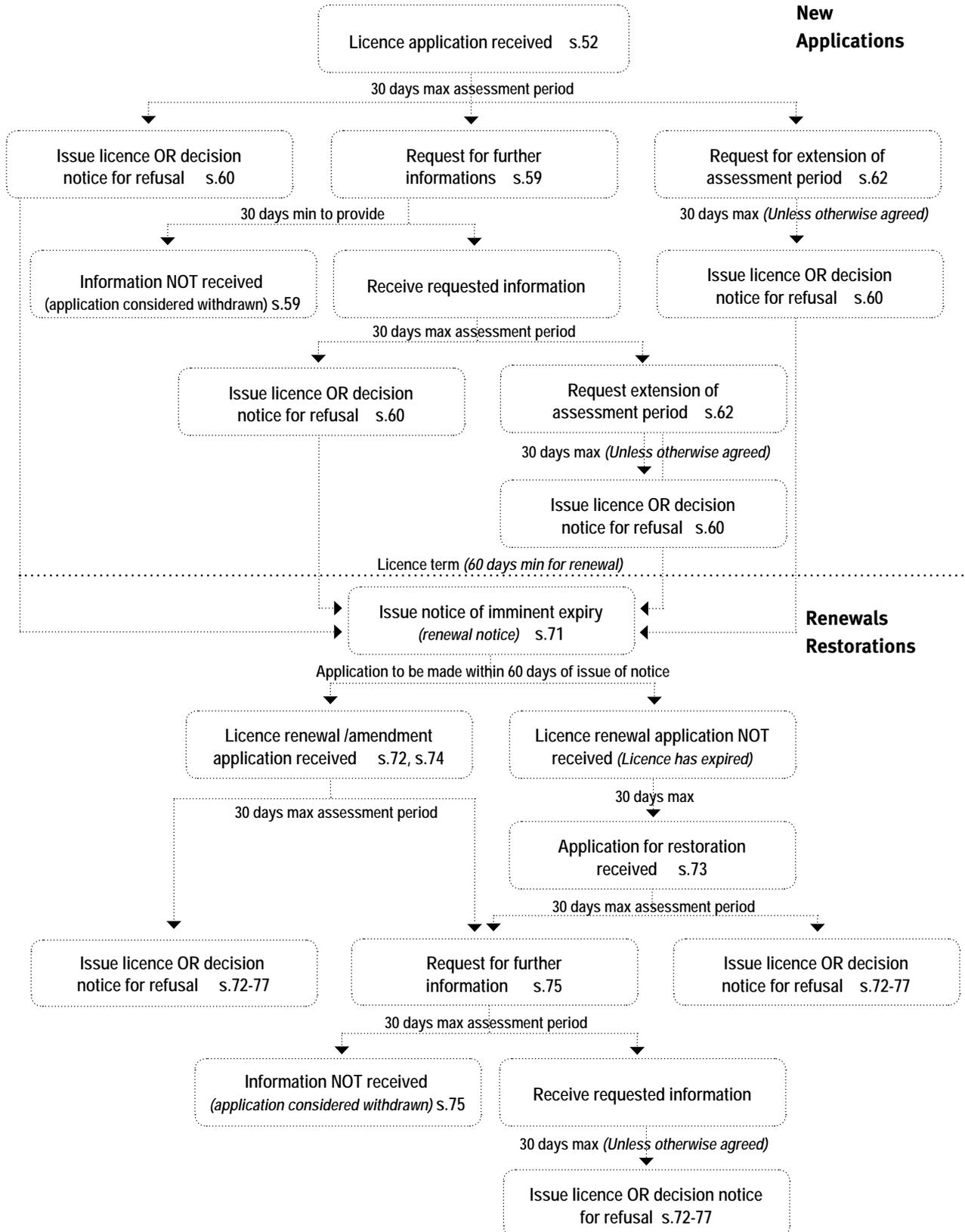
#### **Note**

A Local Government may need more time to consider a food safety program included in an application.

## Flow chart of process for assessing licence applications

This flow chart represents the process of assessing applications for licence. It can be applied equally to:

- ▶ applications for licence, with or without a food safety program as required
- ▶ renewal or restoration of licence
- ▶ amendment or replacement of licence.



## ***Term of licence***

Licences, other than provisional licences remain in force for a period of up to three years, unless cancelled suspended or the Local Government specifies another term. Licences must be renewed at the end of the term of licence. The Act does not include the term “Temporary Food Licence,” but rather states that the term of a licence, other than a provisional licence, remains in force for a term of not more than three years.

### **Example**

The term for licence to sell unpackaged food at a music festival may be granted for one week.  
The term for a licence for a new restaurant may be granted for one year.

## ***Provisional licence***

A provisional licence may be issued before finally deciding on an application if the Local Government is not fully satisfied that the applicant meets the criteria for granting the application. A provisional licence will only be issued if the Local Government reasonably believes that it will grant the application, having regard to all the information provided to decide the application.

### **Example**

A Local Government may decide to grant a provisional licence if the applicant is temporarily unable to comply with the proposed food safety program or if the food business premises only needs minor alterations or repairs to the equipment or the fittings to be suitable.

## ***Term of provisional licence***

A provisional licence remains in force for a term of not more than three months as decided by the Local Government. If the initial term of a provisional licence is less than three months the Local Government may extend the term of the licence by notice given to the applicant. More than one extension may be provided. However, a Local Government may not extend a provisional licence beyond three months. The holder of a provisional licence is not required to have an accredited food safety program.

If a licence is issued prior to the expiry of the term of the provisional licence, the provisional licence is taken to have expired on the issuing of the licence.

## ***Standard conditions of licence***

A food business licence is subject to the following conditions:

- ▶ the licensee must comply with the *Food Act 2006*
- ▶ if the licensee is required to have an accredited food safety program, the licensee must comply with the accredited program
- ▶ the licensee must ensure that the licence, or a copy of the licence, is displayed in a prominent position, easily visible to the people at the premises
- ▶ the licensee must ensure that each of the licensee’s premises under the licence comply with the Food Standards Code, standard 3.2.3 (Food premises and equipment)
- ▶ the licensee must ensure that an authorised person has reasonable access to each of the licensee’s premises under the licence during normal working hours
- ▶ other reasonable conditions the Local Government considers appropriate for the food business under the licence that are stated in the licence.

A condition may be imposed under a licence when the licence is issued, renewed, restored or amended or at any other time the Local Government considers it necessary to impose conditions to ensure that the food for sale is safe and suitable for human consumption.

If the Local Government decides to impose conditions on a licence, other than a provisional licence, to ensure that the food for sale is safe and suitable for human consumption, the Local Government will give the licensee an information notice for the decision.

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### ***Food Safety Supervisors***

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From 1 July 2007 a licensee must ensure that they have a food safety supervisor for the food business. The licensee may be the food safety supervisor and may have more than one food safety supervisor. The licensee must ensure that the food safety supervisor is reasonably available to be contacted by the Local Government while the food business is open for business.

The licensee must advise the Local Government of:

- ▶ the contact details of each food safety supervisor for the food business within 30 days after the licence is issued
- ▶ the commencement of a new food safety supervisor within 14 days of their commencement
- ▶ any changes to the contact details of the food safety supervisor within 14 days of the change
- ▶ a person ceasing to be a food safety supervisor within 14 days.

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### ***Ongoing inspections and assistance***

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After the food business has commenced operating, the Local Government authorised person should conduct inspections of the food business at regular intervals to ensure the food business is operating in accordance with the Food Safety Standards. The authorised person can also provide advice and other information to assist the food business in meeting these standards.

## **Definitions**

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**Equipment** – means a machine, instrument, apparatus, utensil or appliance, other than a single use item, used or intended to be used in or in connection with food handling and includes any equipment used or intended to be used to clean the food premises or equipment.

**Food business** – means a business, enterprise or activity (other than primary food production) that involves:

- (a) the handling of food intended for sale
- (b) the sale of food

regardless of whether the business enterprise or activity concerned is of a commercial, charitable or community nature or whether it involves the handling or sale of food on one occasion only.

**Food handler** – means any person who directly engages in the handling of food, or who handles surfaces likely to come into contact with food, for a food business.

**Food premises** - means any premises including land, vehicles, parts of structures, tents, stalls and other temporary structures, boats, pontoons, including premises used principally as a private dwelling, but does not mean food vending machines or vehicles used only to transport food.

**Food Safety Standards** – these are part of the Food Standards Code and define requirements for food premises on food handling practices and the structural requirements of food premises.

**Handling of food** – includes the making, manufacturing, producing, collecting, extracting, processing, storing, transporting, delivering, preparing, treating, preserving, packing, cooking, thawing, serving or displaying of food.

**Potentially hazardous food** – means food that has to be kept at certain temperatures to minimise the growth of any pathogenic micro-organisms that may be present in the food or to prevent the formation of toxins (eg. meats, seafood, dairy products).

**Primary food production** – is the growing, cultivation, picking, harvesting, collection or catching of food, and includes:

- (a) transport or delivery of food on, from or between the premises on which it was grown, cultivated, picked, harvested, collected or caught
- (b) packing, treating (for example washing) or storing of food on the premises on which it was grown, cultivated, picked, harvested, collected or caught
- (c) any other food production activity prescribed by another Act.

**Safe and suitable food** – food is considered unsafe if it is likely to cause physical harm to a person who might later consume it, assuming they treated the food correctly after purchase. Food is considered unsuitable if it is damaged, deteriorated or perished to an extent that affects its intended use.

**Sanitising** – is a process that significantly reduces the number of micro-organisms present on a surface. This is usually achieved by the use of both heat and water or by chemical sanitisers.

**SFA** – *Safe Food Australia - A guide to the Food Safety Standards*. This guide explains what each of the Food Safety Standards means and uses examples to illustrate.

**Sinks** – includes sinks for food preparation, cleaners, utensil and equipment washing, and personal hand washing basins.

**Temperature control** – means maintaining food at a temperature of:

- a) 5°C, or below if this is necessary to minimise the growth of infectious or toxigenic micro-organisms in the food so that the microbiological safety of the food will not be adversely affected for the time the food is at that temperature
- b) 60°C or above
- c) another temperature if the food business can demonstrate this will not adversely affect the microbiological safety of the food.

## Material to support this guideline

Queensland Health has developed a range of materials to support enforcement agencies in implementing the *Food Act 2006*. These are referenced below and are located in the relevant sections of this folder.

### Standard Resources

- ▶ Application packages for fixed, mobile and temporary food premises

### Standard forms

2.1 Information notice for conditions imposed upon a licence

2.2 Notice for further information required on application

- ▶ licence
- ▶ renewal of licence
- ▶ restoration of licence
- ▶ amendment of licence
- ▶ accreditation of food safety program
- ▶ amendment of food safety program

2.3 Notice requiring further time for consideration of application

- ▶ licence
- ▶ accreditation of food safety program

#### 2.4 Information notice for failure to decide upon application

- ▶ licence
- ▶ renewal of licence
- ▶ restoration of licence
- ▶ amendment of licence
- ▶ accreditation of food safety program
- ▶ amendment of food safety program

#### 2.5 Information notice for refusal of application

- ▶ licence
- ▶ accreditation of food safety program
- ▶ amendment of food safety program
- ▶ amendment of licence
- ▶ restoration of licence
- ▶ replacement of licence
- ▶ renewal of licence

#### 2.6 Application for a licence